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APPLICATION OF

VIRGINIA-AMERICAN WATER COMPANY

CASE NO. PUE-2002-00375

For a general rate increase

HEARING EXAMINER'S RULING

February 26, 2003

Virginia-American Water Company ("Virginia-American" or "Company") filed its Application for a general increase in rates on June 24, 2002. The evidentiary hearing was held December 20, 2002.

On February 14, 2003, Virginia-American filed a Motion to Update the Record of Virginia-American Water Company in Case No. PUE-2002-00375. One of the issues contested at the hearing concerned the amounts paid by the Company to the Hopewell Regional Wastewater Treatment Facility ("Wastewater Treatment"). Virginia-American pays this expense monthly based on an estimate of Wastewater Treatment costs, with a subsequent true-up to reflect actual costs. Virginia-American contends the Staff estimated the level of the true-up adjustment based on updated projected Wastewater Treatment costs for the 2002-03 fiscal year. The Company asserts the actual audited Wastewater Treatment costs for the 2001-02 fiscal year have been published recently, and asks that these results be added to the record in this case.

On February 18, 2003, the City of Hopewell objected to Virginia-American's motion. In its objection, the City of Hopewell contends Virginia-American's motion violates the Commission's Rules of Practice and Procedure ("Rules") in that "a party may correct or supplement any prepared testimony and exhibits before or during the hearing."¹ In addition, "[i]n all proceedings, all evidence must be verified by the witness before introduction into the record . . ."²

On February 25, 2003, Virginia-American filed its Response to the City of Hopewell's Objection to the Motion to Update the Record. Virginia-American pointed out the Commission's Rules may be waived or modified when necessary to serve the ends of justice.³ In addition, the Company argued the updated information is highly relevant and if its validity is in question, the Commission may reopen the hearing. Furthermore, Virginia-American attached the affidavit of Company witness John S. Watson to verify the evidence Virginia-American seeks to introduce.

¹ 5 VAC 5-20-240.

² *Id.*

³ 5 VAC 5-20-10.

Based on the pleadings of the parties, and upon a review of the Commission's Rules, I agree with the City of Hopewell that the Commission's Rules generally prohibit the introduction of evidence after the evidentiary hearing. However, Commission practice and procedure offers three ways for evidence to be admitted after a hearing. First, during the evidentiary hearing, an exhibit may be reserved for late-filed information. Second, the record may be reopened with further hearings to receive the new evidence. Third, the Commission may waive its Rules when necessary to serve the ends of justice.

In this case, an exhibit was not reserved for late-filed information, thus the information can be admitted by either reopening the record and holding an additional hearing, or by waiving the Commission's Rules. Before requiring additional hearings, consideration should be given to the relative importance or impact of the information, in light of the cost to the parties of holding further hearings. In its motion, the Company demonstrated the importance of the information by showing its impact on Staff's calculations. More specifically, the Company claims that the new information may increase jurisdictional costs, as calculated by the Staff, by about \$30,000, or an amount equal to about 3.4% of the proposed increase in revenues for the Hopewell District. However, such an adjustment would have no impact on Staff's ultimate recommendation because Staff's revenue requirement exceeds Virginia-American's requested increase by over \$77,000.⁴ While Staff's recommendations represent only one possible outcome, and this outcome could vary if the recommendations of other parties ultimately are adopted, considering the importance of the information and the cost to the parties of holding additional hearings, I find that additional hearings are not warranted in this case.

Regarding whether the Commission should waive its Rules to permit the additional information, in light of the objection of the City of Hopewell, I find that the Company has failed to show that inclusion of such information is necessary to serve the ends of justice. Similar to the analysis of whether to hold an additional hearing, the importance of new information to this matter fails to rise to the level required for the Commission to waive its Rules. Accordingly, the Company's Motion to Update the Record is hereby denied.

Alexander F. Skirpan, Jr.
Hearing Examiner

⁴ Exhibit No. 12, at 26.